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10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 JEFF HOHLBEIN,

14 Plaintiff,

15 v.

16 RICHARD C. THOMPSON, dba VILLAGE
17 PANTRY, KATHERINE J. THOMPSON,
18 DAVID C. THOMPSON, and DOES ONE to
19 FIFTY, inclusive,

20 Defendants.

Case No. C-05-4859 JL

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES: DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; VIOLATION
OF CALIFORNIA'S CIVIL RIGHTS
STATUTES

JURY TRIAL REQUESTED

21 Plaintiff JEFF HOHLBEIN complains of defendants RICHARD C. THOMPSON, dba
22 VILLAGE PANTRY, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and DOES
23 ONE to FIFTY, inclusive, and alleges as follows:

JURISDICTION AND VENUE

24 1. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 for
25 violations of the **Americans with Disabilities Act of 1990**, (42 **USC** § 12101, *et seq.*)
26 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the
27 same facts, are also brought under California law, including, but not limited to, violations of
28 **California Health & Safety Code** § 19955, *et seq.*, including **California Code of
Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,

54.3 and 55.

2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district, at Eureka, California, and that Plaintiff's causes of action arose in this district.

INTRODUCTION

3. **VILLAGE PANTRY** is located at 1912 Broadway, Eureka, California. Said restaurant is owned and operated by defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and DOES ONE to FIFTY, inclusive.**

Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and DOES ONE to FIFTY, inclusive,** operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

- 1) Signage identifying the accessible parking spaces is non-compliant and improperly posted in violation of California Title 24 § 1129B.5, ADAAG 4.6.4.
- 2) The entrance doors do not have the required level landing in violation of California Title 24 §1133B.2.4.1, ADAAG 4.5.2.
- 3) The height of the customer service cashier counter exceeds the maximum allowable height in violation of California Title 24 § 1122B.4, ADAAG 4.32.4.
- 4) The customer service cashier counter is less than the required 36" in length in violation of California Title 24 § 1122B.4, ADAAG 7.2(2)(i)
- 5) There is an insufficient amount of accessible seating in violation of California Title 24 § 1122B.1, .2 & .3, ADAAG 5.1.
- 6) There is no strike side clearance at the men's restroom exit door in violation of California Title 24 § 1133B.2.4.3, ADAAG 4.13.6.
- 7) There is insufficient clear floor space to maneuver at the Men's restroom exit door in violation of California Title 24 § 1133B.2.4.2, ADAAG 4.13.6.
- 8) The water closet compartment in the men's restroom does not

provide the minimum clear floor space and maneuvering room in violation of California Title 24 § 1115B.7.1(1. - 4.), ADAAG 4.17.3.

- 9) The paper towel and soap dispensers are mounted in excess of the maximum allowable height in violation of California Title 24 § 1115B.9.2, ADAAG 4.22.7.
- 10) The knee clearance below the lavatory does not extend the minimum 30" in width by 17" in depth in violation of California Title 24 § 1115B.2.1.2, ADAAG 4.19.3.
- 11) The grab bars are non-compliant in violation of California Title 24 § 1115B.8.1-4, ADAAG 4.16.4.
- 12) The lavatory operating hardware requires grasping or twisting in violation of California Title 24 § 1115B.2.1.2.1, ADAAG 4.19.5.
- 13) The drain pipes located underneath the lavatory are not insulated or otherwise wrapped in violation of California Title 24 § 1115B.2.1.2.2, ADAAG 4.19.4.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JEFF HOHLBEIN** suffers violations of his civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will suffer embarrassment and humiliation.

FACTUAL ALLEGATIONS

4. Plaintiff **JEFF HOHLBEIN** is, and at all times relevant to this Complaint is, a "physically handicapped person," "physically disabled person," and a "person with a disability," as these terms are used under California law and under federal laws including, but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms "physically handicapped person," "physically disabled person," and a "person with a disability" will be used interchangeably throughout this Complaint.) Plaintiff is a "person with a disability," as defined by all applicable California and United State's laws. Plaintiff **JEFF HOHLBEIN** is severely limited in the use of his legs.

5. Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were and are the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of

1 public facilities known as the **VILLAGE PANTRY**, located at Eureka, California, subject to
2 the requirements of California state law requiring full and equal access to public facilities
3 pursuant to **California Health & Safety Code** § 19955, *et seq.*, **California Civil Code** §§
4 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of the **Americans with**
5 **Disabilities Act of 1990**, and to all other legal requirements referred to in this Complaint.
6 Plaintiff does not know the relative responsibilities of defendants in the operation of the
7 facilities herein complained of, and alleges a joint venture and common enterprise by all
8 such defendants.

9 6. Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID**
10 **C. THOMPSON, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to
11 collectively as “defendants”), at all times relevant herein were and are owners, possessors,
12 builders, and keepers of the **VILLAGE PANTRY** in Eureka, California.

13 7. Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID**
14 **C. THOMPSON, and DOES ONE to FIFTY, inclusive** are the owners and operators of the
15 subject **VILLAGE PANTRY** at all times relevant to this Complaint. Plaintiff is informed and
16 believes that each of the defendants herein is the agent, employee or representative of each
17 of the other defendants, and performed all acts and omissions stated herein within the scope
18 of such agency or employment or representative capacity and is responsible in some
19 manner for the acts and omissions of the other defendants in legally causing the damages
20 complained of herein, and have approved or ratified each of the acts or omissions of each
21 other defendant, as herein described.

22 8. Plaintiff **JEFF HOHLBEIN** does not know the true names and capacities of
23 defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C.**
24 **THOMPSON, and DOES ONE to FIFTY, inclusive**, their business capacities, their
25 ownership connection to the property and business, nor their relative responsibilities in
26 causing the access violations herein complained of, and alleges a joint venture and common
27 enterprise by all such defendants. Plaintiff is informed and believes that each of the
28 defendants herein, including **DOES ONE to FIFTY, inclusive**, is the agent, ostensible agent,

1 master, servant, employer, employee, representative, franchiser, franchisee, joint venturer,
 2 partner, and associate, or such similar capacity, of each of the other defendants, and was at
 3 all times acting and performing, or failing to act or perform, with the authorization, consent,
 4 permission or ratification of each of the other defendants, and is responsible in some manner
 5 for the acts and omissions of the other defendants in legally causing the violations and
 6 damages complained of herein, and have approved or ratified each of the acts or omissions
 7 of each other defendant, as herein described. Plaintiff will seek leave to amend this
 8 Complaint when the true names, capacities, connections and responsibilities of defendants
 9 **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and**
 10 **DOES ONE to FIFTY, inclusive**, are ascertained.

11 9. Plaintiff is informed and believes that all named defendants, including DOES
 12 ONE to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively,
 13 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

14 10. Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID**
 15 **C. THOMPSON, and DOES ONE to FIFTY, inclusive**, are the owners and operators of the
 16 **VILLAGE PANTRY**, located at Eureka, California. This restaurant, including, but not limited
 17 to, parking spaces and access aisles and access routes, are each a part of a “public
 18 accommodation or facility” subject to the requirements of **California Health & Safety Code**
 19 § 19955, *et seq.*, and of **California Civil Code** §§ 51, 52(a), 54, 54.1, *et seq.* On
 20 information and belief, this **VILLAGE PANTRY** restaurant was constructed after 1990, which
 21 has subjected the **VILLAGE PANTRY** restaurant to handicapped access requirements per
 22 **California Health & Safety Code** § 19959, and applicable portions of **California Code of**
 23 **Regulations**, Title 24, (the State Building Code).

24 11. On or about October 5, 2005, Plaintiff **JEFF HOHLBEIN**, visited the **VILLAGE**
 25 **PANTRY** in Eureka, California for the purpose of dining. Defendants **RICHARD C.**
 26 **THOMPSON, KATHERINE J. THOMPSON, DAVID C. THOMPSON, and DOES ONE to**
 27 **FIFTY, inclusive**, interfered with Plaintiff’s access to the **VILLAGE PANTRY** as set forth in
 28 Paragraph 3 above.

Said acts and omissions denied Plaintiff legal handicapped access to the **VILLAGE PANTRY** according to federal and state law.

12. Plaintiff encountered and/or is informed and believes that the following architectural barriers, which violate the requirements of the **California Code of Regulations** Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those similarly situated full and equal access to the subject public facility as set forth in Paragraph 3 above.

13. Defendants, and each of them, discriminated against Plaintiff **JEFF HOHLBEIN** on the basis of his physical disability, and interfered with his access to the **VILLAGE PANTRY** establishment, in violation of both California law including, but not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision of the **Americans with Disabilities Act of 1990**.

14. As a result of the actions and failure to act of defendants, and each of them, and as a result of the failure to provide appropriate handicapped parking, proper handicapped signage, proper handicapped accessible entryways, and handicapped accommodations for a restaurant, Plaintiff **JEFF HOHLBEIN** suffered and will suffer a loss of his civil rights to full and equal access to public facilities, and further suffered and will suffer emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction of this court.

I. FIRST CAUSE OF ACTION:

VIOLATION OF **THE AMERICANS WITH DISABILITIES ACT OF 1990**
(42 **USC** §12101 *et seq.*)

15. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 14 of this Complaint and incorporates them herein as if separately repled.

1 16. Pursuant to law, in 1990 the United States Congress made findings per 42
2 **USC** § 12101 regarding persons with physical disabilities, finding that laws were needed to
3 more fully protect 43 million Americans with one or more physical or mental disabilities; [that]
4 historically society has tended to isolate and segregate individuals with disabilities; [that]
5 such forms of discrimination against individuals with disabilities continue to be a serious and
6 pervasive social problem; [that] the nation's proper goals regarding individuals with
7 disabilities are to assure equality of opportunity, full participation, independent living and
8 economic self-sufficiency for such individuals; [and that] the continuing existence of unfair
9 and unnecessary discrimination and prejudice denies people with disabilities the opportunity
10 to compete on an equal basis and to pursue those opportunities for which our free society is
11 justifiably famous.

12 17. Congress stated as its purpose in passing the ***Americans with Disabilities***
13 ***Act of 1990*** (42 **USC** § 12102):

14 It is the purpose of this act (1) to provide a clear and comprehensive
15 national mandate for the elimination of discrimination against individuals with
16 disabilities; (2) to provide clear, strong, consistent, enforceable standards
17 addressing discrimination against individuals with disabilities; (3) to ensure that
18 the Federal government plays a central role in enforcing the standards
19 established in this act on behalf of individuals with disabilities; and (4) to invoke
20 the sweep of Congressional authority, including the power to enforce the 14th
21 Amendment and to regulate commerce, in order to address the major areas of
22 discrimination faced day to day by people with disabilities.

23 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336
24 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
25 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
26 identified for purposes of this title were "a restaurant, bar, or other establishment serving
27 food or drink;"

28 19. Pursuant to 42 **USC** § 12182,

 "No individual shall be discriminated against on the basis of disability in
the full and equal enjoyment of the goods, services, facilities, privileges,
advantages, or accommodations of any place of public accommodation by any
person who owns, leases (or leases to), or operates a place of public
accommodation."

1 20. Among the general prohibitions against discrimination were included in 42 **USC**
2 §12182(b)(1)(A)(i):

3 **Denial of participation.** It shall be discriminatory to subject an
4 individual or class of individuals on the basis of a disability or disabilities of
5 such individual or class, directly, or through contractual, licensing, or other
6 arrangements, to a denial of the opportunity of the individual or class to
participate in or benefit from the goods, services, facilities, privileges,
advantages, or accommodations of an entity.

7 21. Among the general prohibitions against discrimination were included in 42 **USC**
8 §12182(b)(1)(E):

9 **Association** -- It shall be discriminatory to exclude or otherwise deny
10 equal goods, services, facilities, privileges, advantages, accommodations, or
11 other opportunities to an individual or entity because of the known disability of
an individual with whom the individual or entity is known to have a relationship
or association.

12 The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA,
13 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

14 22. Among the general prohibitions against discrimination were included in 42
15 **USC** § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

16 **Discrimination.** For purposes of subsection (a), discrimination includes:

17 (i) the imposition or application of eligibility criteria that screen out or
18 tend to screen out an individual with a disability or any class of individuals with
19 disabilities from fully and equally enjoying any goods, services, facilities,
20 privileges, advantages, or accommodations, unless such criteria can be shown
to be necessary for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

21 (ii) a failure to make reasonable modifications in policies, practices, or
22 procedures, when such modifications are necessary to afford such goods,
23 services, facilities, privileges, advantages, or accommodations to individuals
24 with disabilities, unless the entity can demonstrate that making such
modifications would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations.

25 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
26 and procedure for entry to the **VILLAGE PANTRY** facility by persons with disabilities and
27 their companions as established by the defendants can be simply modified to eliminate
28 disparate and discriminatory treatment of persons with disabilities by properly constructing

1 barrier free handicapped access for safe and full and equal enjoyment of the **VILLAGE**
 2 **PANTRY** as that enjoyed by other people.

3 24. The specific prohibition against retaliation and coercion is included in the
 4 ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and Procedures* in §
 5 503(c):

6 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to
 7 coerce, intimidate, threaten, or interfere with any individual in the exercise or
 8 enjoyment of, or on account of his or her having exercised or enjoyed, or on
 9 account of his or her having aided or encouraged any other individual in the
 10 exercise or enjoyment of, any right granted or protected by this Act.

11 (c) Remedies and Procedure. - The remedies and procedures available
 12 under sections 107, 203, and 308 of this Act shall be available to aggrieved
 13 persons for violations of subsections (a) and (b), with respect to Title I, Title II
 14 and Title III, respectively.

15 25. Among the specific prohibitions against discrimination were included, in 42
 16 **USC** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications
 17 barriers that are structural in nature, in existing facilities...where such removal is readily
 18 achievable;" and (v) "where and entity can demonstrate that the removal of a barrier under
 19 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,
 20 privileges, advantages, or accommodations available through alternative methods if such
 21 methods are readily achievable." The acts of Defendants set forth herein were a violations
 22 of Plaintiff's rights under the "ADA," Public Law 101-336, and the regulations promulgated
 23 thereunder, 28 **CFR** Part 36, *et seq.*

24 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
 25 were at all times after 1990 "readily achievable." On information and belief, if the removal of
 26 all the barriers complained of here together were not "readily achievable," the removal of
 27 each individual barrier complained of herein was "readily achievable."

28 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily
 accomplishable and able to be carried out without much difficulty or expense." The statute
 and attendant regulations define relative "expense" in relation to the total financial resources
 of the entities involved, including any "parent" companies. Plaintiff alleges that properly

1 repairing each of the items that Plaintiff complains of herein is readily achievable, including,
2 but not limited to, correcting and repairing the items set forth in Paragraph 3 above.

3 The changes needed to remove barriers to access for the disabled were and are
4 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
5 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
6 defendants to remove all such barriers, defendants have failed to make the required services
7 available through alternative methods, although such methods are achievable as required by
8 42 **USC** §12181(b)(2)(a)(iv), (v).)

9 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
10 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
11 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
12 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
13 grounds for believing that he is about to be subjected to discrimination in violation of
14 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
15 the public facilities complained of herein for the purpose of entry and provision of goods and
16 service so long as defendants continue to apply eligibility criteria, policies, practices and
17 procedures to screen out and refuse to allow entry and service to persons with disabilities
18 such as Plaintiff’s.

19 29. Defendants’, and each of their acts and omissions of failing to provide barrier
20 free handicapped access for Plaintiff, were tantamount to interference, coercion or
21 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §
22 12203):

23 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
24 individual in the exercise or enjoyment of, or on account of his or her having
25 aided or encouraged any other individual in the exercise or enjoyment of, any
right granted or protected by this Act.

26 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
27 12188), “Nothing in this section shall require a person with a disability to engage in a futile
28 gesture if such person has actual notice that a person or organization covered by this title

1 does not intend to comply with its provisions.” Pursuant to this last section, Plaintiff, on
 2 information and belief, alleges that defendants have continued to violate the law and deny
 3 the rights of Plaintiff and other disabled persons to access this public accommodation for the
 4 purpose of dining. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

5 “...Where appropriate, injunctive relief shall also include requiring the
 6 provision of an auxiliary aid or service, modifications of a policy, or provision of
 alternative methods, to the extent required by this title.”

7 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil**
 8 **Rights Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to
 9 implement the **Americans with Disabilities Act of 1990**, including, but not limited to, an
 10 order granting injunctive relief and attorneys’ fees. Such attorneys’ fees, “including litigation
 11 expenses and costs,” are further specifically provided for by §505 of Title III.

12 **II. SECOND CAUSE OF ACTION**

13 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL
 14 DISABILITIES (**California Health & Safety Code** § 19955, *et seq.*)

15 32. Plaintiff repleads and incorporates by reference, as if fully set forth again
 16 herein, the allegations contained in paragraphs 1 through 31 of this Complaint and
 incorporate them herein as if separately repled.

17 33. **California Health & Safety Code** § 19955 provides in pertinent part:

18 The purpose of this part is to insure that public accommodations or
 19 facilities constructed in this state with private funds adhere to the provisions of
 20 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
 21 *Government Code*. For the purposes of this part “public accommodation or
 22 facilities” means a building, structure, facility, complex, or improved area which
 23 is used by the general public and shall include auditoriums, hospitals, theaters,
 restaurants, hotels, motels, stadiums, and convention centers. When sanitary
 facilities are made available for the public, clients or employees in such
 accommodations or facilities, they shall be made available for the
 handicapped.

24 34. **California Health & Safety Code** § 19956, which appears in the same
 25 chapter as §19955, provides in pertinent part, “accommodations constructed in this state
 26 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of
 27 Title 1 of the *Government Code*...” **California Health & Safety Code** § 19956 was
 28 operative July 1, 1970, and is applicable to all public accommodations constructed or altered

1 after that date. On information and belief, portions of **VILLAGE PANTRY** and/or of its
 2 buildings, were constructed and/or altered after July 1, 1970, and substantial portions of said
 3 building had alterations, structural repairs, and/or additions made to such public
 4 accommodations after July 1, 1970, thereby requiring said public accommodations and/or
 5 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §
 6 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**
 7 **Safety Code** § 19959.

8 35. Pursuant to the authority delegated by **California Government Code** § 4450,
 9 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
 10 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
 11 California State Architect's Regulations and these regulations must be complied with as to
 12 any alterations and/or modifications of the **VILLAGE PANTRY** occurring after that date.
 13 Construction changes occurring prior to this date but after July 1, 1970 triggered access
 14 requirements pursuant to the "ASA" requirements, the **American Standards Association**
 15 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
 16 modification of said building, all buildings and facilities covered were required to conform to
 17 each of the standards and specifications described in the **American Standards**
 18 **Association Specifications** and/or those contained in Title 24 of the **California**
 19 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

20 36. Public facilities, such as **VILLAGE PANTRY** are public accommodations or
 21 facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

22 37. It is difficult or impossible for persons with physical disabilities who use
 23 wheelchairs, canes, walkers and service animals to travel about in public to use a restaurant
 24 with the defects set forth in Paragraph 3 above as required by Title 24 of the **California**
 25 **Code of Regulations** and the **Americans with Disabilities Act Access Guidelines**
 26 **(ADAAG)**. Thus, when public accommodations fail to provide handicap accessible public
 27 facilities, persons with physical disabilities are unable to enter and use said facilities, and
 28 are denied full and equal access to and use of that facility that is enjoyed by other members

1 of the general public.

2 38. Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with physical
3 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
4 service animals are unable to use public facilities on a “full and equal” basis unless each
5 such facility is in compliance with the provisions of the **California Health & Safety Code** §
6 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are protected
7 by the provisions of **California Health & Safety Code** § 19955, *et seq.*

8 39. The **California Health & Safety Code** was enacted “[t]o ensure that public
9 accommodations or facilities constructed in this state with private funds adhere to the
10 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
11 *Code.*” Such public accommodations are defined to include restaurants.

12 40. Plaintiff is further informed and believes that as of the date of filing this
13 Complaint, Defendants have not made accessible the facilities at the subject restaurant as
14 set forth in Paragraph 3 above.

15 41. Plaintiff **JEFF HOHLBEIN** is informed and believes, and therefore alleges, that
16 Defendants **RICHARD C. THOMPSON, KATHERINE J. THOMPSON, DAVID C.**
17 **THOMPSON, and DOES ONE to FIFTY, inclusive**, and each of them, caused the subject
18 buildings constituting **VILLAGE PANTRY** to be constructed, altered and maintained in such
19 a manner that persons with physical disabilities were denied full and equal access to, within
20 and throughout said buildings and were denied full and equal use of said public facilities,
21 and despite knowledge and actual and constructive notice to such Defendants that the
22 configuration of the restaurant and/or buildings was in violation of the civil rights of persons
23 with physical disabilities, such as Plaintiff. Such construction, modification, ownership,
24 operation, maintenance and practices of such public facilities are in violation of law as stated
25 in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of
26 California.

27 42. On information and belief, the subject building constituting the public facilities
28 of **VILLAGE PANTRY** denied full and equal access to Plaintiff and other persons with

1 physical disabilities in other respects due to non-compliance with requirement of Title 24 of
 2 the **California Code of Regulations** and **California Health & Safety Code** § 19955, *et*
 3 *seq.*

4 43. The basis of Plaintiff's aforementioned information and belief is the various
 5 means upon which Defendants must have acquired such knowledge, including, but not
 6 limited to, this lawsuit, other access lawsuits, communications with operators of other
 7 restaurants and other property owners regarding denial access, communications with
 8 Plaintiff and other persons with disabilities, communications with other patrons who regularly
 9 visit there, communications with owners of other businesses, notices and advisories they
 10 obtained from governmental agencies through the mails, at seminars, posted bulletins,
 11 television, radio, public service announcements, or upon modification, improvement,
 12 alteration or substantial repair of the subject premises and other properties owned by these
 13 Defendants, newspaper articles and trade publications regarding the **Americans with**
 14 **Disabilities Act of 1990** and other access law, and other similar information. The scope
 15 and means of the knowledge of each defendant is within each defendant's exclusive control
 16 and cannot be ascertained except through discovery.

17 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
 18 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
 19 enforce provisions of the law protecting access for persons with physical disabilities and
 20 prohibiting discrimination against persons with physical disabilities, and to take such action
 21 both in his own interests and in order to enforce an important right affecting the public
 22 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
 23 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**
 24 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**
 25 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.

26 45. Defendants, and each of them, at times prior to and including October 5, 2005,
 27 and continuing to the present time, knew that persons with physical disabilities were denied
 28 their rights of equal access to all portions of this public facility. Despite such knowledge,

1 Defendants failed and refused to take steps to comply with the applicable access statutes;
2 and despite knowledge of the resulting problems and denial of civil rights thereby suffered
3 by Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with disabilities, including
4 the specific notices referred to in paragraph 43 of this Complaint. Defendants have failed
5 and refused to take action to grant full and equal access to persons with physical disabilities
6 in the respects complained of hereinabove. Defendants and each of them have carried out
7 a course of conduct of refusing to respond to, or correct complaints about, denial of
8 handicap access. Such actions and continuing course of conduct by Defendants, evidence
9 despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other
10 similarly situated persons, justifying an award of treble damages pursuant to **California**
11 **Civil Code** § 54.3.

12 46. Defendants' actions have also been oppressive to persons with physical
13 disabilities and of other members of the public, and have evidenced actual or implied
14 malicious intent toward those members of the public, such as Plaintiff and other persons
15 with physical disabilities who have been denied the proper access they are entitled to by
16 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
17 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
18 members of the public with physical disabilities.

19 47. Plaintiff prays for an award of treble damages against Defendants, and each of
20 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more
21 profound example of Defendants and discourage owners, operators, franchisers and
22 franchisees of other public facilities from willful disregard of the rights of persons with
23 physical disabilities.

24 48. As a result of the actions and failure of Defendants, and each of them, and as
25 a result of the failure to provide proper accessible public facilities, Plaintiff **JEFF HOHLBEIN**
26 was denied his civil rights, including his right to full and equal access to public facilities, was
27 embarrassed and humiliated, suffered physical, psychological and mental injuries and
28 emotional distress, mental distress, mental suffering, mental anguish, which includes

1 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
 2 and naturally associated with a person with a physical disability being denied access to a
 3 public accommodation.

4 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

5 **III. THIRD CAUSE OF ACTION**

6 VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS
 7 (**California Civil Code** §§ 54, 54.1 and 54.3)

8 49. Plaintiff repleads and incorporates by reference as if fully set forth again
 9 herein, the allegations contained in paragraphs 1 through 48 of this Complaint and
 10 incorporates them herein as if separately replied.

11 50. The public facilities above-described constitute public facilities and public
 12 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.*
 13 and were facilities to which members of the public are invited. The aforementioned acts and
 14 omissions of defendants, and each of them, constitute a denial of equal access to and use
 15 and enjoyment of these facilities by persons with disabilities, including Plaintiff **JEFF**
 16 **HOHLBEIN**. Said acts and omissions are also in violation of provisions of Title 24 of the
 17 **California Code of Regulations**.

18 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and
 19 the denial by defendants of such rights and entitlements are set forth in **California Civil**
 20 **Code** §§ 54, 54.1 and 54.3, to wit:

21 Individuals with disabilities shall have the same right as the...general
 22 public to full and free use of the streets, highways, sidewalks, walkways, public
 23 buildings, public facilities, and other public places. **California Civil Code** §
 24 54(a).

25 Individuals with disabilities shall be entitled to full and equal access, as
 26 other members of the general public, to accommodations, advantages,
 27 facilities, and privileges of all common carriers, airplanes, motor vehicles,
 28 railroad trains, motor buses, streetcars, boats, or any other public
 conveyances or modes of transportation (whether private, public, franchised,
 licensed, contracted, or otherwise provided), telephone facilities, adoption
 agencies, private schools, hotels, lodging places, places of public
 accommodation, amusement or resort, and other places to which the general
 public is invited, subject only to the conditions and limitations established by
 law, or state or federal regulation, and applicable alike to all persons.

California Civil Code § 54.1(a).

52. On or about October 5, 2005, Plaintiff **JEFF HOHLBEIN** suffered violations of **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the goods, services, facilities and privileges of said **VILLAGE PANTRY**, as set forth in paragraph 3 above.

Plaintiff was also denied full and equal access to other particulars, including, but not limited to, those described hereinabove. Plaintiff was also denied use of facilities that he was entitled to under Title III of the **Americans with Disabilities Act of 1990**.

53. As a result of the denial of full and equal enjoyment of the goods, services, facilities and privileges of defendants' **VILLAGE PANTRY** due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining this subject public facility, Plaintiff suffered violations of his civil rights, including, but not limited to, rights under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury, emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a disabled person's denial of full and equal enjoyment of goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within the jurisdiction of the court. Defendants' actions and omissions to act constituted discrimination against Plaintiff on the sole basis that Plaintiff was physically disabled.

54. Plaintiff seeks damages for the violation of his rights as a disabled person on or about October 5, 2005, according to proof, pursuant to **California Civil Code** § 54.3, including a trebling of all statutory and actual damages, general and special, available pursuant to **California Civil Code** § 54.3(a).

55. As a result of defendants' acts and omissions in this regard, Plaintiff **JEFF HOHLBEIN** has been required to incur legal expenses and hire attorneys in order to enforce his rights and enforce provisions of the law protecting the full and equal enjoyment of goods, services, facilities, privileges of public facilities by the disabled, and those individuals associated with or accompanied by a person with disabilities, and prohibiting discrimination

1 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
2 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.
3 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
4 Plaintiff, but also to compel the defendants to make their goods, services, facilities and
5 privileges available and accessible to all members of the public with physical disabilities,
6 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**
7 **Civil Procedure** § 1021.5.

8 56. The acts and omissions of defendants in failing to provide the required
9 accessible facilities subsequent to the enactment date and compliance date of the
10 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
11 alterations to its handicapped parking, handicapped signage, pathways, and other elements
12 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
13 visit and injuries, on or about October 5, 2005, and all times prior thereto with the knowledge
14 that persons with disabilities would enter defendants' premises, the reason given therefor,
15 was an established policy, practice and procedure of refusing and denying entry, thereby
16 denying services to a person with disabilities and the companions thereof, evidence malice
17 and oppression toward Plaintiff and other disabled persons.

18 57. Plaintiff seeks injunctive relief pursuant to **California Civil Code** § 55 to
19 require Defendants to comply with federal and state access regulations.

20 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
21 practice and procedure for entry into said **VILLAGE PANTRY** as hereinabove described.

22 59. As a result of defendants' continuing failure to provide for the full and equal
23 enjoyment of goods, services, facilities and privileges of said **VILLAGE PANTRY** as
24 hereinabove described, Plaintiff has continually been denied his rights to full and equal
25 enjoyment of the subject restaurant, as it would be a "futile gesture" to attempt to patronize
26 said **VILLAGE PANTRY** with the discriminatory policy in place as hereinabove described.

27 60. The acts and omissions of defendants as complained of herein in failing to
28 provide the required accessible facilities subsequent to the enactment date and compliance

1 date of the ***Americans with Disabilities Act of 1990*** and refusal to make remedial
 2 modifications and alternations to the architectural barriers as stated herein and in failing to
 3 establish practices, policies and procedures to allow safe access by persons who are
 4 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
 5 excluding Plaintiff and other members of the public who are physically disabled, from full
 6 and equal enjoyment of the subject **VILLAGE PANTRY** as hereinabove described. Such
 7 acts and omissions are the continuing cause of humiliation and mental and emotional
 8 suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and second
 9 class citizen and serve to discriminate against him on the sole basis that he is physically
 10 disabled. Plaintiff is unable, so long as such acts and omissions of defendants continue, to
 11 achieve full and equal enjoyment of the goods and services of said **VILLAGE PANTRY** as
 12 described hereinabove. The acts of defendants have legally caused and will continue to
 13 cause irreparable injury to Plaintiff if not enjoined by this court.

14 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
 15 continuing refusal by defendants to permit entry to said **VILLAGE PANTRY** and to serve
 16 Plaintiff or others similarly situated, and to require defendants to comply forthwith with the
 17 applicable statutory requirements relating to the full and equal enjoyment of goods and
 18 services as described hereinabove for disabled persons. Such injunctive relief is provided
 19 by **California Civil Code** § 55. Plaintiff further requests that the court award statutory costs
 20 and attorneys' fees to Plaintiff pursuant to **California Civil Code** § 55 and **California Code**
 21 **of Civil Procedure** § 1021.5, all as hereinafter prayed for.

22 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
 23 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
 24 damages.

25 **IV. FOURTH CAUSE OF ACTION**
 26 VIOLATIONS OF **UNRUH CIVIL RIGHTS ACT**
 27 (**California Civil Code** §§ 51 and 51.5)

28 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and

incorporates them herein as if separately replied.

63. Defendants' acts and omissions as specified with regard to the discriminatory treatment of Plaintiff **JEFF HOHLBEIN** on the basis of his physical disabilities, have been in violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever."

64. **California Civil Code** § 51 also provides that "[a] violation of the right of any individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall also constitute a violation of this section."

65. **California Civil Code** § 51.5 also provides that

"[n]o business establishment of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers."

66. As a result of the violation of Plaintiff's civil rights protected by **California Civil Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean "special and general damages"), as well as reasonable attorneys' fees and costs, as allowed by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and 43, Plaintiff seeks appropriate exemplary damages under **California Civil Code** § 3294.

WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

PRAYER FOR RELIEF

Plaintiff prays that this court award damages and provide relief as follows:

1. Grant injunctive relief requiring that defendants establish a non-discriminatory criteria policy, practice, and procedure permitting entry into the **VILLAGE PANTRY** in Eureka, California, for the purpose of obtaining the goods and services accorded therein

1 according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title
 2 III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that
 3 Defendants repair and render safe to handicapped persons, and otherwise make
 4 handicapped-accessible, all public areas of the restaurant, including, but not limited to, each
 5 of the barriers to access identified in Paragraph 3, above, and make such facilities “readily
 6 accessible to and usable by individuals with disabilities,” according to the standards of Title
 7 24 of the **California Administrative Code**, **California Health & Safety Code** § 19955 *et*
 8 *seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of
 9 **ADAAG**; and prohibiting operation of the **VILLAGE PANTRY**, located in Eureka, California,
 10 as a public facility until Defendants provide full and equal enjoyment of goods and services
 11 as described hereinabove to physically disabled persons, including Plaintiff;

12 2. General damages according to proof;

13 3. Statutory and “actual” damages, including general damages and special
 14 damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that
 15 these damages be trebled;

16 4. Prejudgment interest on all compensatory damages;

17 5. Punitive and exemplary damages pursuant to the standards and purposes of
 18 **California Civil Code** § 3294;

19 6. Remedies and Procedures available under **Americans with Disabilities Act**
 20 **of 1990** §§ 107, 203 and 308;

21 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all
 22 reasonable attorneys’ fees as provided by law, including, but not limited to, those
 23 recoverable pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55,
 24 **California Code of Civil Procedure** § 1021.5, and **Americans with Disabilities Act of**
 25 **1990** §308 of Title III; and

26 ///

27 ///

28 ///

2 || SINGLETON LAW GROUP

3 Dated: November 22, 2005 _____

4 Jason K. Singleton, Attorney for
Plaintiff, **JEFF HOHLBEIN**

6 REQUEST FOR JURY TRIAL

7 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

8 SINGLETON LAW GROUP

Dated: November 22, 2005

Jason K. Singleton, Attorney for
Plaintiff, **JEFF HOHLBEIN**